

LICENSURE OF YOUTH CARE 37.97.102
FACILITIES
Subchapter 1
General Requirements

37.97.101 YOUTH CARE FACILITY: PURPOSE (1) These rules establish licensing procedures and licensing requirements for youth care facilities.

(History: Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-111 and 53-4-111, MCA; IMP, Sec. 41-3-501, 41-3-503, 41-3-1102, 41-3-1142, 52-2-113, 53-2-201 and 53-4-113, MCA; NEW, 1978 MAR p. 88, Eff. 1/26/78; AMD, 1983 MAR p. 742, Eff. 7/1/83; AMD, 1986 MAR p. 2080, Eff. 12/27/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1991 MAR p. 2605, Eff. 12/27/91; TRANS, from DFS, 1998 MAR p. 663.)

37.97.102 YOUTH CARE FACILITY: DEFINITIONS (1) The following definitions apply to all youth care facility licensing rules:

- (a) Except in regard to age requirements under Montana medicaid programs which allow for participation of youth up to the age of 21 years, "child" or "youth" means any person under the age of 18 years, without regard to sex or emancipation.
- (b) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or who are without the care and supervision of their parents or guardian.
- (c) "Youth care facility" (YCF) means a licensed facility in which substitute care is provided to youth and includes youth foster homes, youth group homes, youth shelter care facilities, therapeutic youth group homes, and child care agencies.
- (d) "Youth foster home" or "foster care home" or "boarding home" means a YCF in which substitute care is provided to one to six children or youth to whom the foster parents are not related by blood, marriage, adoption or wardship.
- (e) "Youth group home" means a YCF in which substitute care is provided to seven to 12 children or youth.
- (f) "Child care agency" means any YCF in which substitute care is provided to 13 or more children.
- (g) "Youth shelter care facility" means a YCF which regularly receives children under temporary conditions until the court, probation office, the department, or other appropriate social agency has made other provisions for their care.
- (h) "Maternity home" means a YCF which provides for the care and maintenance of minor girls and adult women during pregnancy, childbirth, and postnatal periods. A maternity home must meet the licensing requirements of a child care agency regardless of the number of residents served.
- (I) "Child care staff" means YCF personnel who directly participate in the care, supervision and guidance of children in a YCF.
- (j) "Houseparent" means a staff member whose primary responsibility is the day-to-day care of children in a youth group home.
- (k) "Foster parent" means a person responsible for the day-to-day care, supervision and guidance of children in a youth foster home.
- (l) "Department" means department of public health and human services.

- (m) "Time-out" means the placement of a child for a period of less than 30 minutes in an unlocked room.
- (n) "Restraint" means the extraordinary restriction of a child's freedom or freedom of movement.
- (o) "Passive physical restraint" means the least amount of direct physical contact required by a staff member using approved methods of making such physical contact to restrain a child from harming self or others.
- (p) "Child/staff ratio" means number of children in care per each on-duty child care staff member.
- (2) The following definitions apply only to child care agencies which operate an approved residential treatment center:
 - (a) "Residential treatment center" means a unit or facility of a child care agency that treats children who are seriously disturbed either mentally, emotionally or behaviorally. In addition to the child care agency rules, such unit or facility must meet the licensing requirements contained in ARM 37.97.250, 37.97.253, 37.97.254, 37.97.257, 37.97.258 and 37.97.259.
 - (b) "Seclusion" means isolation of a child in a locked room. Seclusion may be used to protect the child, other children, and staff and to give the child the opportunity to regain control of his or her behavior and emotions by providing definite external boundaries and decreased stimulation.
 - (c) "Chemical restraint" means the use of psychotropic medication to subdue, inhibit, confine or control a child's behavior.
 - (d) "Mechanical restraint" means the restriction by mechanical means of a child's mobility and/or ability to use his/her hands, arms or legs.
- (3) Additional definitions for youth care facilities licensed as therapeutic youth group homes are found in ARM 11.13.101.
- (4) The following definitions apply only to youth shelter care facilities:
 - (a) "Pat down search" means a body search done outside of a youth's clothing with the intention of locating suspected contraband.
 - (b) "Personal property search" means a search which involves going through a youth's personal property and/or room including closet, bed, desk, dresser drawers, etc., with the intention of looking for contraband.
 - (c) "Correspondence search" means opening, inspecting and/or reading a youth's mail or inspecting the contents of a package.

(History: Sec. 41-3-1103, 41-3-1142, 52-2-111 and 53-4-111, MCA; IMP, Sec. 41-3-1102, 41-3-1142, 52-2-113, 53-2-201 and 53-4-113, MCA; NEW, 1978 MAR p. 88, Eff. 1/26/78; AMD, 1983 MAR p. 742, Eff. 7/1/83; AMD, 1986 MAR p. 2080, Eff. 12/27/86; TRANS, from Dept. of SRS, 1987 MAR p. 1942, Eff. 7/1/87; AMD, 1988 MAR p. 172, Eff. 1/29/88; AMD, 1991 MAR p. 2605, Eff. 12/27/91; AMD, 1992 MAR p. 2728, Eff. 12/25/92; AMD, 1993 MAR p. 403, Eff. 3/26/93; AMD, 1993 MAR p. 1209, Eff. 6/11/93; AMD, 1993 MAR p. 1506, Eff. 7/16/93; AMD, 1995 MAR p. 471, Eff. 3/31/95; AMD, 1198 MAR p. 489, Eff. 2/13/98; TRANS, from DFS, 1998 MAR p. 663.)

Rules 03 and 04 reserved

37.97.105 YOUTH CARE FACILITY: LICENSE REQUIRED

- (1) Every youth care facility shall be licensed by the department, or responsible tribal authority.
- (2) Failure of a provider to obtain or renew a license while continuing to operate a youth care facility is a misdemeanor and shall be subject to the penalties provided in 41-3-504, MCA.

(History: Sec. 41-3-503 and 53-4-111, MCA; IMP, Sec. 41-3-502, 41-3-504, 41-3-1103, 41-3-1141, 41-3-1143, 53-2-201 and 53-4-113, MCA; NEW, 1978 MAR p. 88, Eff. 1/26/78; AMD, 1983 MAR p. 742, Eff. 7/1/83; AMD, 1986 MAR p. 2080, Eff. 12/27/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 663.)

37.97.106 YOUTH CARE FACILITY: LICENSES

(1) One-year licenses. The department shall issue a one year youth care facility license to any license applicant that meets all licensing requirements established by these rules, as determined by the department after a licensing study, or, that is licensed or otherwise approved by another state agency.

(a) The department shall renew the license annually on the expiration date of the previous year's license if:

(i) the YCF makes written application for renewal at least 30 days prior to the expiration date of its current license; and

(ii) the YCF continues to meet all licensing requirements established by these rules, as determined by the department after a relicensing study.

(b) If a YCF makes timely application for renewal of a license, but the department fails to complete the relicensing study before the expiration date of the previous year's license, the previous year's license will continue in effect for the time necessary for the department to complete the relicensing study and to make a determination of compliance with licensing requirements.

(2) Provisional license. The department may in its discretion issue a provisional license for any period up to 6 months to any license applicant which:

(a) has met all licensing requirements for fire safety; and

(b) has agreed in writing to comply fully with all licensing requirements established by these rules within the time period covered by the provisional license.

(i) The department may in its discretion renew a provisional license if the license applicant shows good cause for failure to comply fully with all licensing requirements within the time period covered by the prior provisional license, but the total time period covered by the initial provisional license and renewals may not exceed 1 year.

(3) Restricted license. A restricted license may be issued for the care of a specific child with the approval of the department.

(4) The YCF shall not accept more children than the number specified on the license.

(5) No applicant(s) shall be newly licensed for a youth foster home if any one of the following has occurred within 12 months of the application, unless an exception is granted by the department:

(a) a death of a spouse or child in the applicant's family;

(b) a marital separation or divorce of the applicant(s);

(c) an adoption of a child who has not been living with the adoptive parent(s);

(d) the birth of a child to the applicant(s); or

(e) loss of employment by the applicant;

(f) If (5)(a), (b), (c), (d) or (e) occur in a licensed foster home, the foster parent(s) shall notify the licensing social worker within 48 hours. The licensing social worker will reevaluate the home within 30 days to determine whether there should be any change in the licensing status.

(6) If a couple, the applicant(s) shall have been together for at least 24 months.

(7) Any applicant who has received services for substantiated abuse or neglect of a child as defined in ARM 37.47.602(1)(m) shall be denied a foster care license unless

special approval is given by the regional administrator after careful review of extenuating circumstances which justify the issuance of a restricted license.

(8) Any applicant whose own children have been in foster care should be denied a foster care license, unless an exception is granted by the department because the circumstances leading to the provision of services or the placement no longer exists.

(History: Sec. 41-3-1103, 41-3-1142 and 53-4-111, MCA; IMP, Sec. 41-3-1103, 41-3-1142, and 53-4-113, MCA; NEW, 1978 MAR p. 88, Eff. 1/26/78; AMD, 1983 MAR p. 742, Eff. 7/1/83; AMD, 1983 MAR p. 1746, Eff. 11/26/83; AMD, 1984 MAR p. 1635, Eff. 11/16/84; AMD, 1986 MAR p. 2080, Eff. 12/27/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1988 MAR p. 2217, Eff. 10/14/88; AMD, 1990 MAR p. 590, Eff. 3/30/90; AMD, 1991 MAR p. 2605, Eff. 12/27/91; TRANS, from DFS, 1998 MAR p.663.)

Rules 07 through 09 reserved

37.97.110 YOUTH CARE FACILITY: LICENSING PROCEDURES

(1) Application for a YCF license must be made on an application form provided by the department.

(2) Upon receipt of an application for license or renewal of license, the department shall conduct a licensing study to determine if the applicant meets all licensing requirements for licensure as established in these rules.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, it will notify the applicant of the specific deficiencies or errors, and the applicant shall submit the required or corrected information within 60 days. The department shall not issue a license or renew a license until it receives all required or corrected information.

(History: Sec. 41-3-503, 41-3-1103, 41-3-1142 and 53-4-111, MCA; IMP, Sec. 41-3-503, 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113, MCA; NEW, 1978 MAR p. 88, Eff. 1/26/78; AMD, 1979 MAR p. 443, Eff. 5/11/79; AMD, 1983 MAR p. 742, Eff. 7/1/83; AMD, 1986 MAR p. 2080, Eff. 12/27/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1991 MAR p. 2605, Eff. 12/27/91; TRANS, from DFS, 1998 MAR p. 663.)

Rules 11 through 14 reserved

37.97.115 YOUTH CARE FACILITY: LICENSE REVOCATION AND DENIAL

(1) The department, after written notice to the applicant or licensee, may deny, suspend, restrict, revoke or reduce to a provisional status a license upon finding that:

- (a) the YCF is not in compliance with fire safety standards; or
- (b) the YCF is not in substantial compliance with any other licensing requirements established by this rule; or
- (c) the YCF has made any misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility; or
- (d) the YCF has failed to use the foster care payments for the support of the foster child; or
- (e) the YCF or its staff have been named as the perpetrator in a substantiated report of abuse or neglect; or
- (f) the YCF failed to report an incident of abuse or neglect to the department or its local affiliate as required by 41-3-201, MCA.
- (g) the YCF, its staff or anyone living in a YCF household may pose any risk or threat to the safety or welfare of any youth placed in the YCF.

(2) At the discretion of the department and for protection of the child(ren) in placement the child(ren) may be moved immediately upon receipt of a report of sexual or physical abuse by the YCF.

(History: Sec. 41-3-503, 41-3-1103, 41-3-1142 and 53-4-111, MCA; IMP, Sec. 41-3-503, 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113, MCA; NEW, 1978 MAR p. 88, Eff. 1/26/78; AMD, 1983 MAR p. 742, Eff. 7/1/83; AMD, 1983 MAR p. 1746, Eff. 11/26/83; AMD, 1984 MAR p. 1635, Eff. 11/16/84; AMD, 1986 MAR p. 2080, Eff. 12/27/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1990 MAR p. 590, Eff. 3/30/90; AMD, 1991 MAR p. 2605, Eff. 12/27/91; TRANS, from DFS, 1998 MAR p. 663.)

Rules 16 and 17 reserved

37.97.118 YOUTH CARE FACILITY, HEARING PROCEDURES

(1) Any person aggrieved by an adverse department action denying or revoking a license for a YCF may request a hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(History: Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-111, 52-2-602, 52-2-622, 52-2-704 and 53-4-111, MCA; IMP, Sec. 41-3-503, 41-3-1103, 41-3-1142, 52-2-111, 52-2-113, 53-2-201, 52-2-602, 52-2-622 and 53-4-113, MCA; NEW, 1978 MAR p. 88, Eff. 1/26/78; AMD, 1983 MAR p. 742, Eff. 7/1/83; AMD, 1986 MAR p. 2080, Eff. 12/27/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS & AMD, from DFS, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2001 MAR p. 1107, Eff. 6/22/01; AMD, 2002 MAR p. 1553, Eff. 5/31/02.)

Rules 19 through 24 reserved

37.97.125 YOUTH CARE FACILITY: PERSONS AFFECTED BY DEPARTMENT RECORDS (REPEALED)

(History: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA; IMP, Sec. 2-4-201, 41-3-1103, 41-3-1142 and 52-2-111, MCA; NEW, 1994 MAR p. 3011, Eff. 11/24/94; TRANS, from DFS, 1998 MAR p. 663; REP, 2004 MAR p. 2409, Eff. 10/8/04.)

Rules 26 and 27 reserved

37.97.128 YOUTH CARE FACILITY: CONFIDENTIALITY OF RECORDS AND INFORMATION

(1) All records maintained by a YCF and all personal information made available to a YCF pertaining to an individual child must be kept confidential and are not available to any person, agency or organization except as specified in (2) through (4) of this rule.

(2) All records pertaining to an individual child are available upon request to:

- (a) the child's parent, guardian, legal custodian, or attorney absent specific and compelling reasons for refusing such records;
- (b) a court with continuing jurisdiction over the placement of the child or any court of competent jurisdiction issuing an order for such records;
- (c) a mature child to whom the records pertain, absent specific and compelling reasons for refusing specific records; or
- (d) an adult who was formerly the child in care to whom the records pertain absent specific and compelling reasons for refusing such records.

(3) All records pertaining to individual children placed by the department are available at any time to the department or its representatives.

(4) Records pertaining to individual children not placed by or in the custody of the department shall be available to the department for the purposes of licensing or relicensing the YCF.

Rule 29 reserved

37.97.130 YOUTH CARE FACILITY: REPORTS (1) The provider shall agree to submit to the department, upon its request, any reports required by federal or state law or regulation.

(2) The YCF (except youth foster homes) shall report any of the following changes to the department prior to the effective date of the change:

- (a) a change of administrator;
- (b) a change in location;
- (c) a change in the name of the agency, program or facility; or
- (d) a significant change in the organization, administration, purposes, programs, or services.

(3) Youth foster homes shall report a change of residence to the department prior to moving and the department shall evaluate the new residence within 30 days of receiving the report.

(4) As required by 41-3-201, MCA, the provider or staff member shall report within 24 hours any incidents of known or suspected child abuse or neglect to the local county welfare office or the state child abuse hot line 1-800-332-6100.

(a) If no action is taken on the referral, or if the above resources are not available at the time, reports shall be made to the department of public health and human services district or state office.

(b) Each child care agency shall require each staff member of the agency to read and sign a statement which clearly defines child abuse and neglect and outlines the staff member's responsibility to report all incidents of child abuse or neglect according to state law to the department or its local affiliate and to the chief administrator of the agency or a person designated by the administrator.

(c) Each child care agency shall report any suspected or alleged incident of child abuse or neglect to the department and cooperate fully in the investigation of any incident.

(d) Each child care agency shall have written procedures for handling any suspected incident of child abuse including:

- (i) a procedure for ensuring that the staff member involved does not work directly with the child involved until the investigation is completed;
- (ii) a procedure for conducting in-house investigation of the incident;
- (iii) a procedure for disciplining any staff member involved in an incident of child abuse; and
- (iv) a procedure for notification of the county welfare department.

(5) Any serious incident involving a child shall be reported within the next working day to the person or agency which placed the child and to the licensing worker.

(a) A "serious incident" means suicide attempts, excessive physical force by staff, sexual assault by residents or staff, injury to a child which requires hospitalization, or the death of a child.

(b) The YCF shall complete a written incident report concerning any serious incident involving a child. The report shall include the date and time of the incident, the child involved, the nature of the incident, description of the incident and the circumstances surrounding it. A copy of the report shall be filed at the YCF and a copy shall be sent to the licensing worker.

- (6) Runaways shall be reported immediately to the police and within the next working day to the agency or person who placed the child.
- (7) Disasters or emergencies which require closure of a residence unit shall be reported to the licensing worker within the next working day.
- (8) The current YCF license shall be publicly displayed at the YCF.

(History: Sec. 41-3-503, 41-3-1103, 41-3-1142 and 53-4-111, MCA; IMP, Sec. 41-3-503, 41-3-1142, 53-2-201 and 53-4-113, MCA; NEW, 1978 MAR p. 88, Eff. 1/26/78; AMD, 1983 MAR p. 742, Eff. 7/1/83; AMD, 1983 MAR p. 1746, Eff. 11/26/83; AMD, 1986 MAR p. 2080, Eff. 12/27/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 663.)

Rule 31 reserved

37.97.132 YOUTH CARE FACILITY: GENERAL REQUIREMENTS FOR FOSTER PARENTS AND CHILD CARE STAFF WORKING IN YOUTH GROUP HOMES AND CHILD CARE AGENCIES

(1) In addition to the specific requirements set out in subchapters 2, 4, and 6, of this chapter, child care staff working in group homes and child care agencies, and foster parents, must:

- (a) be at least 18 years of age;
- (b) be of good moral character;
- (c) be physically, mentally, and emotionally competent to care for children;
- (d) like and understand children; and
- (e) be in good general health.

(2) The department may require a psychological evaluation or medical examination of, and/or a signed authorization for release of medical or psychological records from:

- (a) any person applying for licensure as a foster parent, or any member of the household of a person applying for licensure as a foster parent;
- (b) any foster parent, or any member of a foster parent household; and
- (c) any person defined as child care staff.

(3) A personal statement of health for licensure form provided by the department must be completed for each person subject to the requirements of this rule. The form must be submitted to the department with the initial application for licensure and annually thereafter.

(4) The department may require completion of a criminal background and child and adult protective services check on each person subject to the requirements of this rule.

(History: Sec. 41-3-1103, 41-3-1142 and 53-4-111, MCA; IMP, Sec. 41-3-1103, 41-3-1142 and 53-4-111, MCA; NEW, 1991 MAR p. 2262, Eff. 11/28/91; AMD, 1997 MAR p. 1664, Eff. 9/23/97; TRANS, from DFS, 1998 MAR p. 663.)